JAMALUDIN SAMADI

v.

PUBLIC PROSECUTOR

HIGH COURT, SINGAPORE
KAN TING CHIU JC
[MAGISTRATE'S APPEAL NO. 17/91/01]
29 JULY 1991

CRIMINAL LAW: *Dangerous Drugs - Cautioned statement - Accused not informed of the charge against him - Reasonable doubt.*

The appellant was convicted for trafficking in heroin. According to the prosecution, on 13 September 1981, the appellant sold a straw of heroin to RS (a Narcotics Officer) for $15, however he was only arrested a week later, on 20 September.

His arrest at this later date when he was not selling drugs became a material issue during the appeal. The explanation given by the two narcotics officers relating to the non-arrest of the appellant on 13 September were contradictory, and this undermined the veracity of the evidence of the sale itself.

A cautioned statement taken from the appellant was tendered in evidence but the appellant objected to its admission on the grounds that he was assaulted before his statement was recorded. After a trial-within-a-trial, the Court admitted the statement.

Held:

[1] There is a doubt as to whether the appellant's statement had been recorded in accordance with the law; in the circumstances, the statement should not have been admitted in evidence at the trial.

[2] There are doubts on two issues which were not considered by the trial Judge - why the appellant was not arrested immediately and whether the prosecution witnesses have disclosed everything about the attempts to purchase drugs from the appellant.

[Appeal allowed and conviction set aside.]

For the public prosecutor - Chan Seng Onn
For the appellant - Vinod Dube Kumar

JUDGMENT

Kan Ting Chiu JC:

The appellant was convicted for trafficking in heroin. The offence was that on 13 September 1989 he sold one straw of heroin to Narcotics Officer Ravinder Singh for $15.

The main evidence against him came from NO Ravinder Singh. His evidence was that on that day he was on an operation with two other officers, namely NO Rahman A Bakar and ANO Mohd. Erfan. He was instructed to pose as a purchaser seeking a supplier. At about 8.20 p.m. He approached a female Malay and told her that he wanted to buy heroin and she referred the appellant to him. After he asked the appellant for a straw of heroin, the appellant went to a nearby house and returned a few minutes after 8.55 p.m. with a straw of heroin which he sold to him for $15.

The appellant was not arrested immediately after the sale. In fact, he was not arrested for a week until 20 September when NO Ravinder Singh approached him again to buy heroin. He refused to sell him any heroin, and was arrested later on.

As the appellant denied selling the drugs to NO Ravinder Singh, the failure to arrest him at the time of the alleged sale, and his arrest a week later when he was not selling drugs were material issues in the case against him.

The prosecution adduced evidence at the trial as to why the appellant was not arrested immediately on 13 September when he made the sale. NO Ravinder Singh said that there was no arrest because his team was engaged in a pending operation in that area. NO Rahman, who was in charge of the operation, gave another reason. He said that NO Ravinder Singh advised him not to make the arrest because there were other drug traffickers around, and they may be overpowered if they tried to do that. When questioned by the trial Judge, he said that there were no other operations against drug traffickers in the area that night.

These explanations were contradictory and inconsistent. Whereas NO Ravinder Singh said that there was a pending operation, NO Rahman said that there was only one operation. Although NO Rahman said he was advised by NO Ravinder Singh not to make an arrest for fear of being overpowered, NO Ravinder Singh made no mention of having or expressing such apprehension.

It was unfortunate that the officers who carried out a planned operation against traffickers which concluded without an arrest even after having established contact and completed a purchase did not make any proper record of the reasons why the operation concluded that way. This was made worse when conflicting reasons were given by them when they came to Court. This unsatisfactory evidence on this aspect of the operation also undermined the veracity of the evidence of the sale itself.

After the appellant was arrested on 20 September, a statement was recorded from him on the same day. The prosecution tendered in evidence the statement. The appellant objected to its admission on the grounds that he was assaulted before the statement was recorded and that he did not say anything. After a trial within-a-trial, the trial Judge admitted the statement.

In the statement the appellant admitted that on 13 September at about 8.30 p.m. a female friend introduced him to NO Ravinder Singh. NO Ravinder Singh wanted to buy one straw of heroin, and at about 9 pm he sold him that for $15. The contents of the statement were substantially similar to the evidence of NO Ravinder Singh, which was that he met the appellant on that day sometime after 8.20 p.m. through a female Malay and completed the purchase a few minutes after 8.55 p.m.

The statement would have been unexceptional if it was recorded after the appellant had been informed of the offence for which he was arrested, but that was not the case. The recording officer Ng Beng Chin told the trial Judge that he did not tell the appellant the particulars of the charge before he recorded the statement. There was a question whether the appellant really made the statement of an event in the previous week without being told that that was the event under investigation. The DPP submitted that even if the appellant was told of the offence under investigation that would not affect the probative value of the statement which the trial Judge had found to be properly recorded. That is not an adequate answer. Once the evidence of the recording officer is called into question, the integrity of the whole recording exercise is affected. Insofar as the trial Judge failed to consider these matters at all before admitting the statement in evidence, that ruling must be re-examined. After reviewing all the

evidence, I found that there was a doubt whether the statement was recorded in the manner described by the prosecution and that the statement should not have been admitted in evidence.

I also considered the trial Judge's rejection of the appellant's defence. The appellant's evidence was that he did not sell heroin to NO Ravinder Singh on 13 September. He also said that NO Ravinder Singh returned on the two following days, that is, 14 and 15 September, and tried to buy heroin from him, but again he did not sell him any. A few days later, the CNB officers arrested him. The prosecution's evidence was that he was arrested on 20 September after he refused to sell heroin to NO Ravinder Singh.

The prosecution did not dispute or confirm the appellant's evidence on the events of 14th and 15th. If it was accepted, then the events did not take place as described by NO Ravinder Singh and NO Rahman. The effect of the evidence was that after not having effected an arrest on the 13th, NO Ravinder Singh tried thrice to buy heroin from the appellant and failed before the appellant was arrested on the 20th. If that was what really took place, then the credibility of NO Ravinder Singh and NO Rahman was undermined because they had presented the events as having occurred over two days - the day of sale and the day of arrest. As the appellant's evidence on this point was not disputed, it must on a proper consideration raise further doubt in the prosecution case.

The result of the foregoing examination of the case was that there are doubts on two issues which were not considered by the trial Judge - why the appellant was not arrested immediately and whether the prosecution witnesses have disclosed everything about the attempts to purchase drugs from the appellant. I therefore allowed the appellant's appeal and set aside his conviction.

Also found at [1991] 3 CLJ 2299